



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0305; FRL- 9783-9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Deferral for CO₂ Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE) on April 4, 2012. This revision defers until July 21, 2014 the application of the Prevention of Significant Deterioration (PSD) permitting requirements to biogenic carbon dioxide (CO₂) emissions from bioenergy and other biogenic stationary sources in the State of Maryland. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2012-0305**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection

Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 7, 2012 (77 FR 55171), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of a revision to the Maryland SIP which would defer until July 21, 2014 the application of PSD permitting requirements to biogenic CO₂ emissions from bioenergy and other biogenic stationary sources in Maryland. The formal SIP revision (#12-02) was submitted by MDE on April 4, 2012. During the public comment period, EPA received a request from a commenter to extend the comment period. In response to that request, EPA re-opened the public comment period for an additional 30 days under additional notice on November 16, 2012 (77 FR 68721).

II. Summary of SIP Revision

EPA incorporated the biomass deferral into the Code of Federal Regulations (CFR) governing state programs and into the Federal PSD program by amending the definition of “subject to regulation” under 40 CFR 51.166 and 52.21 respectively. Maryland implements its PSD program by incorporating section 52.21 by reference. This incorporation references a date specific version of the CFR and is updated periodically and submitted to EPA for approval into

the SIP. In order to adopt the Biomass Deferral, Maryland has revised COMAR 26.11.06.14B(1) to incorporate the 2009 version of 40 CFR 52.21 “as amended by” the Tailoring Rule *and* the Biomass Deferral. Additionally, the definitions of “PSD source” and “greenhouse gas” at COMAR 26.11.01.01 and 26.11.02.01 respectively have been revised to incorporate the Biomass Deferral.

Other specific requirements of Maryland’s April 4, 2012 submittal and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR, either during the initial comment period, or the additional 30-day comment period.

III. Final Action

EPA is approving Maryland’s April 4, 2012 SIP submittal as a revision to the Maryland SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to the regulation of biogenic GHGs in Maryland may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 8, 2013.

W. C. Early,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V--Maryland

2. In § 52.1070, the table in paragraph (c) is amended by revising the second entry for COMAR 26.11.01.01, and the entries for COMAR 26.11.02.01, and 26.11.06.14.

The amendments read as follows:

§ 52.1070 Identification of plan.

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(c)* * *

EPA-Approved Regulations, Technical Memoranda, and Statutes in the Maryland SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
26.11.01	General Administrative Provisions			
* *	* *	* *	* *	
26.11.01.01	Definitions	3/5/12	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised .01B(6-1) and .01B(37)
* *	* *	* *	* *	
26.11.02	Permits, Approvals, and Registration			
26.11.02.01	Definitions	3/5/12	[Insert Federal Register publication date] [Insert page	Revised .01B(44) and .01C(1)

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
			<u>number where the document begins]</u>	
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26.11.06	General Emissions Standards, Prohibitions, and Standards			
* * * * *				
26.11.06.14	Control of PSD Sources	3/5/12	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Revised .14B(1).
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[FR Doc. 2013-04145 Filed 02/27/2013 at 8:45 am; Publication Date: 02/28/2013]